No. 87-1490

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1988

JOHN E. MALLARD, Petitioner

v.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
et al., Respondents

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

John E. Mallard
107 South Main Street
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PETITION FOR CERTIORARI FILED MARCH 5, 1988
CERTIORARI GRANTED OCTOBER 3, 1988

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

May 28, 1987--Order To Find Counsel entered by the U.S. District Court for Southern District of Iowa, Central Division.

June 11, 1987--Report To Court On Appointment of Counsel filed by Volunteer Lawyers Project.

June 26, 1987--Petitioner's Motion To Withdraw filed.

July 6, 1987--Response Of Amicus Curiae, The Volunteer Lawyers Project To Motion To Withdraw filed.

July 6, 1987--Affidavit Of Dennis Groenenboom filed.

July 7, 1987--Order entered denying Petitioner's Motion To Withdraw.

July 13, 1987--Order entered extending Petitioner's time to file notice of appeal.

July 29, 1987--Petitioner's Statement Of Appeal Of Denial Of Motion To Withdraw and Motion To Dismiss Appointment Of Counsel filed.

July 29, 1987--Petitioner's Brief In Support Of (1) Appeal Of Denial Of Motion To Withdraw And (2) Motion To Dismiss Appointment Of Counsel filed.

July 29, 1987--Affidavit Of John E. Mallard filed.

October 27, 1987--Ruling On Motion entered denying Petitioner's Appeal Of Motion To Withdraw and Motion To Dismiss Appointment Of Counsel.

November 5, 1987--Petitioner's Request To Amend Order To Include Statement Prescribed By 28 U.S.C. Section 1292(b) and Application For Stay Of Order filed.

November 5, 1987--Ruling entered denying Petitioner's Request To Amend and Application For Stay.

November 27, 1987--Petitioner's Petition For Writ Of Mandamus filed in U.S. Court of Appeals for the Eighth Circuit.

December 7, 1987--Order entered denying Petitioner's Petition For Writ Of Mandamus.

December 23, 1987--Order To Appear entered by U.S. District Court ordering Petitioner to appear on behalf of Plaintiffs.

December 30, 1987--Petitioner's Application For Stay Of Order To Appear filed in U.S. District Court.

December 30, 1987--Petitioner's Memorandum In Support Of Application For Stay Of Order To Appear filed.

January 21, 1988--Ruling entered by U.S. District Court denying Petitioner's Application For Stay Of Order To Appear.

January 28, 1988--Petitioner's Application For Stay of Order To Appear filed in U.S. Court of Appeals.

February 8, 1988--Order entered by U.S. Court of Appeals granting Petitioner's Application For Stay of Order To Appear.

February 10, 1988--Order entered by U.S. District Court staying all proceedings.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

MARK ALLEN TRAMAN et al., Plaintiffs

v.

STEVE PARKIN, et al., Defendants

Civil No. 87-317-B

MOTION TO WITHDRAW
Filed June 26, 1987.

COMES NOW, John E. Mallard, Marcus & Mallard, P.C., 107 South Main Street, Fairfield, Iowa 52556 and pursuant to Local Rule 1.5.7 moves to withdraw from the representation of Plaintiffs for the following reasons:

1. On or about June 3, 1987, I received a telephone call from Dennis Groenenboom of the Volunteer Lawyers Project, Des Moines, Iowa. Mr. Groenenboom advised me that I had been selected to represent the Plaintiffs in

the above-captioned case and briefly described the nature of the claims made in this case. I advised Mr. Groenenboom that I had no experience in representing plaintiffs in cases of this nature and asked whether he could reconsider my selection. Mr. Groenenboom advised me that I had been selected on a lottery basis and that he would send the file to me. I never agreed to take on the representation of the Plaintiffs in this case but decided that I would receive the file so that I could review it and learn more about the case.

2. Upon receipt of the file I reviewed it and determined that the case involved allegations by prisoners at the Iowa State Penitentiary in Fort Madison, Iowa, that they were requested to act as informants by prison guards and administrators and that the prison guards and administrators failed to preserve the

confidentiality of the Plaintiffs' role as informants and also retaliated against Plaintiffs for certain other reasons. The case involves three Plaintiffs and eight Defendants including prison guards and prison administrators, and Plaintiff Traman has indicated that there may be additional defendants. Based upon my review of the case, it appears that in order to establish the facts of the case, counsel for Plaintiffs will need to depose numerous Defendants and other witnesses. It also appears that counsel for Plaintiffs will need to examine and cross examine numerous parties and witnesses at trial.

3. In light of the nature of this case and the fact that I have no experience in this type of litigation which requires substantial discovery by deposition and a trial with many parties

and witnesses, I called Patricia Lapointe of the Volunteer Lawyers Program, Des Moines, Iowa on June 22, 1987 and asked her if I could withdraw from the representation of the Plaintiffs and substitute as counsel in another case which involved an area of practice which I understood, such as bankruptcy law or securities law. She mentioned that it is possible to be relieved of any obligation under the Federal pro bona referral program by signing up for other volunteer lawyers projects with the legal services program and that I might provide debt counseling, etc. However, Ms. Lapointe said that, in light of the fact that my name had been given to the court, I would need to make a motion to the court to withdraw.

4. I have no experience in litgation in cases such as the subject case which involves multiple plaintiffs

and defendants and requires substantial depositions and an ability to prepare, examine, and cross examine numerous parties and witnesses at trial.

. . .

M. I am willing to volunteer my services for other volunteer lawyers projects with the legal services program, in lieu of participating in the federal pro bona referral program for which I am not qualified.

WHEREFORE, I request that this Motion To Withdraw as counsel for Plaintiffs in the above captioned case be granted.

Dated this 25th day June, 1987.

/s/ John E. Mallard
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IN THE UNITED STATES DISTRICT COURT
IN THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

MARK ALLEN TRAMAN, et al., Plaintiffs

v.

STEVE PARKIN, et al., Defendants

Civil No. 87-317-B

RESPONSE OF AMICUS CURIAE,
THE VOLUNTEER LAWYERS PROJECT
TO MOTION TO WITHDRAW
Filed July 6, 1987.

COMES NOW, the Volunteer Lawyers Project, Amicus Curiae, and responds to the Motion to Withdraw signed by Attorney John E. Mallard on June 25, 1987 in regard to the above captioned case.

Mr. Mallard moves to withdraw under local Rule 1.5.7. The case involves an inmate of the Iowa State Penitentiary and it is a civil case brought under 42 U.S.C. Section 1983. The plaintiff sought representation of counsel pursuant to 28 U.S.C. Section 1915(d). Mr.

Mallard was appointed to represent the plaintiff by the Volunteer Lawyers Project pursuant to court order.

Local Rule 1.5.7 provides that an attorney may withdraw from a case for "good cause shown." Mr. Mallard, in his motion, details his legal experience and seems to protest this appointment based on his lack of similar experience.

As Mr. Mallard states in his motion he graduated from law school in 1980. He practiced in California from May 1981 through April 1983. During that time he was involved in creditor/debtor proceedings in state courts and acted as assistant counsel on several actions involving contract law. He was also involved in one deposition and participated in one trial.

For approximately one year from April 1983 to May 1984 he was in-house counsel to United Investment Groups. He

assisted in structuring and preparing private placement memoranda for securities offering involving research and development limited partnerships. His current practice has been primarily in the organization and capitalization of businesses. He states that the principal area of his expertise is in the structuring and preparation of documents for security offerings and that substantially all of his time is spent representing business clients and clients who own or are developing real property.

More recently, Mr. Mallard has been associated with the law firm of Marcus & Mallard, P.C., in Fairfield, Iowa, since May 1984. Mr. Mallard has appeared as counsel of record in 3 federal cases in the Southern District of Iowa since January 1987. In connection with these cases he has consulted from time to time

with attorney Tom Zurek of Des Moines.

The recitation of the above facts plus others found in his Motion belie Mr. Mallard's seeming cry to the court that he is not competent to handle this case. In fact, Mr. Mallard sets out at the end of paragraph 2 of his Motion a plan for proceeding with the litigation of this case.

The 8th Circuit Court of Appeals in the case Matter of Snyder, 734 F2d 334 (1984) dealt with a similar situation. In the Snyder case an attorney appointed to represent a criminal defendant pursuant to the Criminal Justice Act communicated to the court that he wished to be taken off the list of attorneys willing to accept appointments in indigent cases. Snyder at 336.

In dealing with Mr. Snyder's objection, the court also discussed the efficacy of any plan which depends

totally upon voluntary participation. Snyder at 339. The court states as follows:

> "We find merit in the reasoning that there is an implied obligation to perform pro bono trial services on every licensed attorney who is engaged in litigation, not just those who are willing to come forward . . . Also, appointing only those who feel they have competence in criminal cases in no way assures competency; it is common knowledge that many counsel appointed by district courts under the C.J.A are young lawyers just out of law school trying to gain early experience in the trial of cases."

Even though the Snyder case involved a criminal appointment the reasoning is applicable to Mr. Mallard's Motion in that the court essentially seems to expect attorneys, no matter what their level of experience is, to do the work necessary to handle a case competently.

The 8th Circuit is absolutely clear that court appointed counsel is

appropriate in the civil context.

> "We have recently stated that when an indigent presents a colorable civil claim to the court, the court, upon request, should order the appointment of counsel from the Bar. Nelsen v. Redfield Lithograph Printing, 728 F2d 1003 (8th Cir. 1984). This procedure should be made applicable to claims brought by prisoners. Thus, once a district court is satisfied that the prisoner has alleged a prima facie case, counsel should be appointed upon request unless the prisoner wishes to represent him or herself." Hahn v. McLey 737 F2d at 774 (8th Cir. 1984).

Mr. Mallard concludes his Motion at paragraph 4 (M) with an offer to join the Volunteer Lawyers Project (VLP) in lieu of participating in the Federal pro bono Referral Program. The Volunteer Lawyers Project is a joint venture of the Legal Services Corporation of Iowa and the Iowa State Bar Association. Since February 1986 the VLP has been placing civil pro bono assignments for the federal courts

in both the Southern and Northern Districts of Iowa. The current policy is that only attorneys who have previously signed up for the Volunteer Lawyers Project are passed over when a federal referral is being placed. Attorneys are not given the option of signing up for the Volunteer Lawyers Project in lieu of taking a federal referral at the time the phone call is made to place the case.

A change in this policy is currently under consideration by the Volunteer Lawyers Project since the logical extension of the current policy is that all attorneys could sign up for the Volunteer Lawyers Project and no one would be left to accept federal referrals. Therefore, the policy may be changed such that all attorneys with some federal court experience (other than bankruptcy) may be requested to handle federal referrals nonwithstanding their

involvement with the Volunteer Lawyers Project.

Currently, only attorneys who have some federal court experience, other than bankruptcy, are called on for these assignments. Clearly, Mr. Mallard meets this requirement. See attached Affidavit of Dennis Groenenboom for a description of the procedure followed in the placement of this case.

The court has the power to appoint counsel in civil cases pursuant to Hahn and Nelsen and 28 U.S.C. Section 1915(d). In addition, attorneys admitted to practice in the Southern District of Iowa take an Oath of Admission that provides in part:

> "I do solemnly swear . . . that I will never, reject from any consideration personal to myself, the cause of the defenseless or oppressed, . . . so help me God." Local Rule 1.5.5.

Also, the 8th Circuit in the Snyder case states at 338:

> "The term "profession", it should be borne in mind, as a rule is applied to a group of people pursuing a learned art as a common calling in the spirit of public service where economic rewards are definitely an incidental, though under the existing economic conditions undoubtedly a necessary by-product. In this a profession differs radically from any trade or business which looks upon money-making and personal gain as its primary purpose. The lawyer cannot possible get away from the fact that this is a public task..." State ex rel. Wolff v. Ruddy, 617 S.W.2d 64, 65-66 (Mo. 1971) (quoting Anton-Hermann Chroust, 1 The Rise of the Legal Profession in America x-xi (1965) cert. denied, 454 U.S. 1142, 102 S.Ct. 1000, L.Ed.2d 293 (1982).

Therefore, although Mr. Mallard's practice has been primarily in the field of business law, since he is a member of the bar he has an ethical duty to represent the indigent inmate, Mr. Traman.

CONCLUSION

It would appear from his own statements that Mr. Mallard is competent to handle this case, that he was appointed to do so consistent with the current policies of the Volunteer Lawyers Project, and that ethical considerations demand that he not be allowed to withdraw.

Respectfully submitted,

/s/ Patricia R. Lapointe
Managing Attorney
Volunteer Lawyers Project

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

MARK ALLEN TRAMAN, et al., Plaintiffs

v.

STEVE PARKIN, et al., Defendants

Civil No. 87-317-B

BRIEF IN SUPPORT OF
(1) APPEAL OF DENIAL OF
MOTION TO WITHDRAW AND
(2) MOTION TO DISMISS
APPOINTMENT OF COUNSEL
Filed July 29, 1987.

COMES NOW, Attorney John E. Mallard and submits the following Brief In Support of Appeal and Motion.

. . .

II

MAGISTRATE LONGSTAFF ABUSED HIS DISCRETION IN DENYING ATTORNEY MALLARD'S MOTION TO WITHDRAW BECAUSE MALLARD IS NOT COMPETENT TO REPRESENT PLAINTIFFS

The Eighth Circuit has recognized that attorneys representing indigents under 28 U.S.C. Section 1915(d) must be "competent."

> "We think it incumbent upon the chief judge of each district to seek the cooperation of the bar associations and the federal practice committees of the judge's district to obtain a sufficient list of attorneys practicing throughout the district so as to supply the court with competent attorneys who will serve in pro bono situations such as the case presented."

Nelson v. Redfield Lithograph Printing, 728 F.2d 1003, 1005 (8th Cir. 1984) (emphasis added).

In so ruling, it appears that the Eighth Circuit intended that any powers exercised by this Court pursuant to 28 U.S.C. Section 1915(d) be circumscribed by Canon 6 of the Code of Professional Responsibility. The Iowa Code of Professional Responsibility as adopted by the Iowa Supreme Court provides that "A lawyer shall not handle a legal matter which he knows or should know that he is not competent to handle, without

associating with him a lawyer who is competent to handle it." Disciplinary Rule 6-101(A)(1). "He . . . should accept employment only in matters which he is or intends to become competent to handle." Ethical Consideration 6-1. "While the licensing of a lawyer is evidence that he has met the standards then prevailing for admission to the bar, a lawyer generally should not accept employment in any area of the law in which he is not qualified." Ethical Consideration 6-3. While Canon 2 of the Code of Professional Responsibility encourages attorneys to make legal counsel available by serving the disadvantaged and rendering free legal services, it does so in a context which recognizes that "Employment should not be accepted by a lawyer when he is unable to render competent service." Cf. Ethical Considerations 2-27 and 2-32.

This case involves claims alleged under 42 U.S.C. Section 1983 by three inmates at the Iowa State Penitentiary in Fort Madison, Iowa. The case has been brought against eight Defendants, including prison guards and other officials, and Plaintiff Traman has indicated that there may be additional defendants. Plaintiffs allege that Defendants have systematically filed false disciplinary reports against them and have endangered their lives by exposing their role as informants. A review of the pleadings filed indicates that substantial discovery will be required to unravel the facts and that many material facts are likely to be disputed. (If the material facts were not disputed, then certain of the Defendants would have stepped forward and would likely have been dismissed based

upon Plaintiffs' allegations.)

In light of the numerosity of the parties and the disputed facts, the successful prosecution of this case on behalf of Plaintiffs would appear to depend upon the ability of counsel for Plaintiffs to solicit testimony from Defendants and discover inconsistencies and/or unbelievable statements. In this regard, it is key that counsel for Plaintiffs be skilled at deposing and cross-examining witnesses, and at trial techniques which highlight the weaknesses of Defendants' testimony.

The background of Attorney Mallard demonstrates that Mallard is not competent to represent Plaintiffs in a case as complex as the instant case. Mallard has no experience in litigation involving numerous parties and disputed facts, which litigation requires skill in (i) deposition and other discovery

techniques, (ii) cross-examination, and (iii) trial techniques. Furthermore, Mallard has testified that he does not like the confrontational nature of litigation and, for this reason, lacks confidence in his ability to effectively represent Plaintiffs.

In determining an attorney's competence in a particular field, a court might rightly inquire regarding such attorney's ability to learn a new area of practice. It should be noted that, although Attorney Mallard has no experience in interpreting the law under 42 U.S.C. Section 1983, Mallard does not argue that he should be allowed to withdraw from the representation of Plaintiffs on these grounds. Mallard is experienced in construing "difficult" statutes and regulations in connection with his corporate and securities

practice, and such skill should be easily transferrable to a civil rights statute. The Eighth Circuit has made a similar point in stating that "Lawyers who specialize in civil cases must necessarily engage in a diversity of study in all spheres of our social, political, and economic systems. The step across to the criminal law, by the experienced civil trial attorney, is really no step at all." In Re Snyder, 734 F.2d 334, 340 (8th Cir. 1984).

However, while an attorney might have some obligation to learn new areas of law and enhance his legal abilities so that he will become competent to undertake a particular representation, Attorney Mallard submits that it is not appropriate to expect a non-litigator to become a litigator. Thus, the Eighth Circuit in Snyder did not state that business lawyers should make a

transformation to become criminal lawyers; rather, the Eighth Circuit stated that "The step across to the criminal law, by the experienced civil trial attorney, is really no step at all." Snyder at 340 (Emphasis added).

This Court recognized the difference between litigators and non-litigators when, in response to the Eighth Circuit's directive in Nelson at 1005 "to obtain a sufficient list of attorneys . . . who will serve in pro bono situations," this Court had the clerk of court prepare a list of attorneys who had been counsel of record in federal court in connection with five or more civil cases in 1982. While this list was subsequently expanded to include any attorney admitted to practice in the Southern District of Iowa and in good standing who had appeared as counsel in a nonbankruptcy federal case

in the past five years, in an effort to prevent pro bono assignments from becoming burdensome to a relatively small number of lawyers, this method of selection in no way eliminated the mandate to provide "competent" counsel.

Attorney Mallard has appeared as counsel of record in two cases filed in this Court, and continues to act as counsel of record in one of those cases. However, there should be no irrebuttable presumption that any attorney who appears of record in a nonbankruptcy federal case is necessarily competent to act as a litigator. Mallard's affidavit demonstrates that he has appeared due to special circumstances including the facts that (1) the case was taken only because Peter Jenkins, an experienced litigator, had recently become "of counsel" to his firm and was expected to become a partner after he gained admission to the Iowa bar

and the United States District Court for the Southern District of Iowa, (2) the case had to be filed quickly to preserve certain causes of action which were about to run under the statute of limitations, (3) Mallard sought admission to practice before this Court because Mr. Jenkins had not yet been admitted to the Iowa bar, (4) upon the departure of Mr. Jenkins, Mallard has consulted with another attorney who is skilled in litigation, and (5) Mallard has continued as counsel due to ethical obligations to his client.

Mallard submits that he should not be required to represent Plaintiffs in violation of his obligation under Disciplinary Rule 6-101(A)(1) to undertake only those legal representations for which he is competent. There are good policy reasons for such a finding. First, it is unfair

to the client whose rights are dependent upon effective representation. Second, it is unfair to the attorney who may subject himself, unwilling, to malpractice. Finally, to require this representation would inject inefficiency into the judicial system because, in the event there has been ineffective assistance of counsel, the indigent client may be entitled to the appointment of a new attorney and the retrial of his case.

For the reasons stated above, Magistrate Longstaff's ruling denying Attorney Mallard's Motion To Withdraw was an abuse of discretion and should be reversed.

/s/ John E. Mallard
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MARK ALLEN TRAMAN, et al., Plaintiffs

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STEVE PARKIN, et al., Defendants

Civil No. 87-317-B

AFFIDAVIT OF JOHN E. MALLARD
Filed July 29, 1987.

I, John E. Mallard, being first duly sworn, state to the court as follows:

1. I graduated from Vanderbilt Law School in December 1980.

2. I practiced as an attorney at Glenn, Wright, Jacobs and Schell, San Diego, California from May 1981 through April 1983 and I was involved primarily in the representation of creditors in debt collection and bankruptcy proceedings. While I appeared in the Bankruptcy Court for the Southern District of California on numerous

occasions, my representation of clients was limited to (1) complaints for relief from the automatic stay; (2) appearances to investigate assets of debtors; and (3) appearances to respond to proposed plans of reorganization. I also was involved in creditor-debtor proceedings in state courts and as assistant counsel in several actions involving breach of contracts and disputes arising out of contracts. During my association with Glenn, Wright, Jacobs and Schell, I was involved in one deposition relating to the foreclosure of a residence, and one trial in which the sole issue of fact for determination by the court was the value of certain real property that was the subject of a motion for relief from stay.

3. In April, 1983 I left the private practice of law and became in-house counsel to United Investment Groups, Inc., an Iowa corporation which

was involved in the syndication and sale of limited partnership investments. Except as described below, I have not been involved in any litigation since April, 1983.

4. During my employment at United Investment Groups, Inc., I assisted in structuring and preparing private placement memoranda for securities offerings involving research and development limited partnerships.

5. In May 1984 I became associated with the law firm of Jay B. Marcus, P.C. and became a partner in Marcus & Mallard, P.C. on January 1, 1987. During the time of my association with Marcus & Mallard, P.C., my representation of clients has been primarily in the organization and capitalization of businesses. The principal area of my expertise is in the structuring and preparation of documents

for securities offerings and substantially all of my time is spent representing business clients and clients who own or are developing real property.

6. Two of the principal clients of Marcus & Mallard, P.C. have been The Beckley Group and Edward J. Beckley. Based upon our representation of Mr. Beckley, this firm has developed certain familiarity with the personal business dealings of Mr. Beckley.

7. In approximately November, 1986, Mr. Beckley asked this firm to review certain investments he was holding.

8. Upon review of certain of the investments, it appeared that there were certain irregularities in the offering memoranda which had been presented to Mr. Beckley at the time of his investments. This firm agreed to arrange for the filing of complaints with respect to two

investments because (i) the statute of limitations was about to run as to certain causes of action, (ii) Mr. Peter Jenkins had recently become of counsel to this firm and had substantial ligitation experience, and (iii) this firm was very familiar with the circumstances of Mr. Beckley's investments and the securities laws.

9. Prior to this time Marcus & Mallard, P.C. had not handled any litigation other than a couple of debt collection actions in state court. Marcus & Mallard, P.C. only determined to take on the suits for Mr. Beckley (and also two suits for other clients involving breaches of contracts) because Mr. Jenkins had become "of counsel" to this firm. Mr. Jenkins had more than 10 years of litigation experience and it appeared that Mr. Jenkins would become a

partner in Marcus & Mallard, P.C. after he gained admission to the Iowa bar and the United States District Court for the Southern District of Iowa.

10. No member of Marcus & Mallard, P.C. had been admitted to practice before the United States District Court for the Southern District of Iowa at the time the complaints were required to be filed in order to prevent certain statutes of limitations from running. Consequently, this firm arranged for James & Galligan, P.C., Des Moines, Iowa, to file the complaints on behalf of Mr. Beckley. Subsequently, in January 1987, I obtained admission to practice before this court, and in February, 1987, substituted in as counsel for plaintiffs. After my substitution as counsel, Mr. Jenkins decided to leave the private practice of law in Fairfield, Iowa and take a position with a company in Florida.

11. I never intended to become involved in trying the cases which were filed on behalf of Mr. Beckley and certain other plaintiffs (Civil Actions 86-880-A and 86-914-A). In the absence of Mr. Jenkins, I have consulted from time to time with Tom Zurek of Mumford, Schrage and Zurek, P.C., Des Moines, Iowa, in connection with certain aspects relating to these cases, and I have also explored the possibility of Mr. Zurek's substitution as counsel or association as co-counsel. However, due to personal considerations of our client, our client's desire to settle the cases which have been filed, and our ethical obligation to continue to represent our client as long as our skills allow, I have not pursued the association or substitution of Mr. Zurek as counsel for the plaintiffs at this time. Civil Action

86-914-A has been dismissed and the only remaining case in which I am counsel is Civil Action 86-880-A.

12. I have no intention to develop a litigation practice in either the federal or state courts in Iowa and would not have filed the suits on behalf of Mr. Beckley except for the special circumstances set forth at Paragraph 8 above. I do not intend to file additional suits on behalf of other persons except possibly in the areas of debtor-creditor relations and/or bankruptcy proceedings.

13. I have no experience in representing litigants in actions filed under 42 U.S.C. Section 1983 and remember this statute only as a statute which was included in my constitutional law course taken in my first year (1977-1978) of law school. I do not recall the elements of a cause of action brought under this

section and would have to study it thoroughly to become competent. I have no intention to develop a practice representing litigants in actions filed under 42 U.S.C. Section 1983.

14. I do not like the role of confronting other persons in a litigation setting, accusing them of misdeeds, or questioning their veracity. Because of my reluctance to become involved in these activities, I do not feel confident that I would be effective in litigating a case such as the instant case.

Dated this 28th day of July, 1987.

/s/ John E. Mallard
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107 South Main Street
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(515) 472-5945

Subscribed and sworn to before me by John E. Mallard this 28th day of July, 1987.

/s/ Notary Public